

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LAWRENCE M. MARTIN,

Plaintiff,

v.

KAREN BRUNSON, *et al.*,

Defendants.

Case No. C07-5664RJB

REPORT AND  
RECOMMENDATION TO  
DISMISS COMPLAINT  
WITHOUT PREJUDICE

Noted for February 1, 2008

This case has been referred to Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. § 636(b)(1)(B). This matter comes before the court upon plaintiff's request to withdraw his complaint (Doc. 8). After reviewing plaintiff's motion, the undersigned recommends that the court GRANT the motion and dismiss this matter without prejudice pursuant to Rule 41(a).

Under Rule 41, a plaintiff has the right to voluntarily dismiss his case when no answer or motion for summary judgment has been filed by an adverse party. Rule 41(a)(1) specifically provides that dismissal as a matter of right can be foreclosed only by the filing of an answer or a motion for summary judgment. Roddy v. Dendy, 141 F.R.D. 261, 262 (S.D. Mississippi, 1992).

Plaintiff filed his complaint with the court on or about November 19, 2007. The matter has not been served on any of the name defendants. Accordingly, plaintiff's request should be GRANTED, and this matter should be dismissed without prejudice. Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those

1 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit  
2 imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **February 1, 2008**, as  
3 noted in the caption.

4 DATED this Wednesday, January 9, 2008.

5  
6 /s/ J. Kelley Arnold  
7 J. Kelley Arnold  
8 United States Magistrate Judge  
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